124-554

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# Supreme Court of the United States,

## OCTOBER TERM, 1887.

**No. 149.**

JACOB O. JOYCE,

*vs.*

THE CHILLICOTHE FOUNDRY and MACHINE WORKS COMPANY, et. al.

# Brief for Appellant.

WOOD & BOYD,

*Counsel.*

O'NEIL & HEALY, STATIONERS AND PRINTERS, CINCINNATI.

# SUPREME COURT OF THE UNITED STATES.

## October Term—1887.

JACOB O. JOYCE,
APPELLANT,

*vs.*

CHILLICOTHE FOUNDRY & MACHINE WORKS COMPANY, *et al.*

No. 149.

## BRIEF FOR APPELLANT.

### STATEMENT.

The bill was brought in the Court below by the Complainant, against the defendant, alleging the infringement of Letters Patent No. 154,989, granted Complainant September 15, 1874; praying for an injunction and account for profits and damages.

The record shows that the patentee, Joyce, is the manufacturer of his patented Jacks, which are made in large quantities at his manufactory in Dayton, Ohio.

The record shows that the Chillicothe Foundry and Machine Works Co. manufactured the Defendants' Jacks for F. W. DeWeese.

The issues in this case, raised by the Appellees are, first—want of novelty; and second—non-infringement.

The Court below dismissed the bill at plaintiffs costs, from which the appellants appealed.

### ERROR ASSIGNED.

The Court should have found that the plaintiff's patent was valid. The Court should have found that the first claim was infringed by the defendant. The opinion was rendered by Justice

Matthews orally, and we presume it is substantially reported in the Federal Reporter Vol. 15, page 260.

The following reasons stated in the opinion we think are error:

1. That the first claim of the Joyce patent is limited to a pawl provided with side lugs moved by gravity alone, between and in inclined guide ways in the side wall of the frame.

2. That the function of the inclined seat and pawl in the defendant's jack, is not to assist the forward movement of the pawl, but to assist the spring in holding the pawl in place.

The Court should have found that the function of the spring did not act to hold the pawl in position, but simply acted to start the movement of the pawl.

3. That defendant's jack has no slots or other means of guiding the pawl in the slides of the frame.

4. The Court erred in dismissing the bill.

## JOYCE PATENT.

The claim alleged to be infringed is as follows:

1. A pawl for a lever jack with two or more teeth adapted to move in inclined slots, grooves, or guides formed in the frame, substantially as described.

The patent describes the operation as follows:

"The operation is seen at a glance; when the latch bar is raised, its teeth crowd or slide the paul up the incline slots out of the way, so as to allow it to pass until it has traveled the length of the tooth, and the weight of the pawl causes it to fall back into the next tooth below, and ready to hold the rack-bar at the point gained."

The patentee further states that other modifications may be used and the inclined ways instead of the slots D D.

He says: "In Fig. 2 is a modification which consists of tongue and grooves." He further states that other modifications involving the same principle of operation, may be possible; but

"I prefer the construction represented in Fig. 1. At the same time not limiting myself to that, but claiming any equivalent arrangement." Thus, it will be seen that the patentee has obtained a broad claim for a pawl combined with a lever jack having two or more teeth which move in inclined slots, grooves, or guides formed in the frame of the jack. The necessary features of this combination are, first—the frame of the jack; second—the toothed rack bar B, on which the load rests to be lifted, moving vertically in the hollow frame of the jack; third—the shipping lifting lever provided with teeth which engage with the rack-bar for raising and lowering it; fourth—a many-toothed pawl moving in grooves, ways or guides, formed in the frame; or, in other words, an inclined pawl box within the frame of the jack.

The necessary mode of operation is that the manipulation of the lever will operate the pawl by forcing it up the inclined guides formed in the pawl box, when the rack-bar is raised by the lever. When the lever has been raised sufficiently, the pawl moves down its inclined seat, and its several teeth engage with the rack-bar and the inclined seat holds the pawl from slipping back. Thus making a very secure, and more durable and safe lever jack.

## THE RESULT OF THIS INVENTION.

The testimony of Mr. Joyce on pages 15, 16, of the record, shows that prior to the introduction of his device the Leffel Jack with a single toothed pivot pawl, was the principal one on the market.

But since that time the Leffel Jack has not been made to any extent, but that the Joyce and Mosher Jacks have taken its place in the market. This testimony of Mr. Joyce has not been disputed.

It further appears from the testimony of Mr. Mosher, page 60, question and answer 34, 35, that he was familiar with the Joyce Jack at the time that he got up the jack made by the defendants.

## JOYCE PATENT IS NOVEL.

It will not be contended, we think, that any of the alleged anticipating devices show the combination and mode of operation of the Joyce patent. No prior device or patent shows the combination of five elements, necessarily included in the above claim to-wit: The frame of the lever jack, the vertical moving rack-bar, the shipping lifting lever, the many toothed pawl, the inclined sent for the pawl in the pawl box and the guides formed on the pawl and in the frame of the jack. None of the anticipating devices show the pawl moved backward and upward out of the seat, by the operation of the lifting lever through the rack-bar.

This, therefore, is a new feature, and it is obvious that a very useful result is obtained by the new combination. The real defense made in this case is that, prior to Joyce's invention similarly operating pawls had been used in an analogous way, in other devices, such as window-sashes, elevator cages, and cotton presses.

It is conceded that many-toothed and gravitating pawls were known and used prior to Joyce's invention; but the combination shown by him did not exist, and it will be found that none of the prior devices were operated by the lifting lever through the medium of a rack-bar lifting the pawl out of its seat, and preserving its parallelisms by ways, grooves or guides formed in the frame of a lever jack. Hence, the construction and mode of operation shown and described by Joyce are new.

Before discussing the construction of the claims in view of the state of the art which it is alleged limits the first claim of the Joyce patent, to a construction which would make it equivalent to the second claim, we desire to call attention to the authorities. The opinion of the Court as reported, finds in substance that the first claim is limited to a pawl provided with side lugs moving by gravity alone, between inclined guide ways formed in the side walls of the frame. The reading of the claim shows that this construction is somewhat strained. The claim is as follows:

"A pawl for a lever jack, with two or more teeth, and adapted to move in inclined slots. grooves or guides formed in the frame, substantially as described."

There is nothing in the specification which shows or claims any advantage in forming the guides on the sides of the pawl, and in the sides of the pawl box, as contra-distinguished to the top and bottom, or other portions.

The second claim is as follows:

"The combination of the pawl A with its pins C C', slots D D' and ratchet bar B."

The claim we take to be specific, and the first claim a broad claim without reference to the location of the guides.

The answer of defendants, (See pages 8, 9, 10,) does not set up want of invention as a defense; but relies upon anticipation and non-infringement. The opinion of the Court seemingly finds want of invention except upon the limited construction of the claim, by reason of the fact of analogous uses of substantially the same thing. This we understand to mean really an anticipation of the first claim. We insist that the combination specified in this first claim is new "*per se*," and entitled to a broad construction; and that the patents cited do not either anticipate, or *tend* to limit the claim. We rely upon the following decicions as laying down the proper rule of law to be applied to the case at bar.

## AUTHORITIES.

We understand, that the rule of law requires, that to defeat a patent, the same organization must be shown, operating in the same manner, and producing the same result substantially.

See Terrell vs. Railroad, 1 Wall. 491.

Bates vs. Coe, 98 U. S. 31. and Clough vs. Barker, 106 U. S. 176.

In the latter case the Supreme Court say, in speaking of an alleged anticipating device,—"The structure was not designed for the same purpose as Clough's. No person looking at it, or using

it, but would understand, that it was not to be used in the way that Clough's is used. And it is not shown to have been really used and operated in that way."

On the previous page, in speaking of another anticipating device,—the Barker Burner—the Court say, that that "burner" really amounts to this only:—That, if the burner is now used in the way in which it was never designed to be used, and is not shown to ever have been used before Clough's invention, it may be used to furnish a supplementary supply of gas."

And again on page 177.—"The combination of the first claim of the Clough patent being new, and consequently there never having been any valve arrangement applied to regulate the flow of gas, in such a combination, the premises on which the decision of the Court proceeded fail. Clough is entitled to the benefit of the doctrine of equivalents as applied to the combination of the burner, surrounding tube, and regulating tube, covered by the second claim of his patent."

So in the case at bar. Joyce having been the first one to apply for the combination of the lifting lever, rack-bar and many toothed pawl moving in inclined ways or guides, formed in the frame of the jack, is entitled to that combination, and to all equivalent modes therefor.

The devices relied upon to anticipate or to limit the claim, are first.—

## WILLIAMSON PATENT.

This patent is No 116,656, dated July 4th. 1871.

It shows the hoisting cage of an elevator, upon the cross-beam of which are mounted, at the ends, pawls E. E. These pawls however, are operated by means of the weight G, spring J, link levers F; and are so constructed, that when the weight G is held up by the lifting rope, the pawls are out of contact with the side faces of the stanchions A A; and if the rope should break, the weight G would drop, depress the lever F, and they would

force the pawls against the cheeks of the stanchions. These pawls are normally out of engagement with the stanchions, or guide posts A A; and when operated at all, are operated by means of the toggle link levers to prevent the descent of the cage. We think it obvious, that these pawls do not suggest the Joyce invention in any manner whatsoever. They do not require racks. They work the same with rack teeth as without, they are really wedges. See deposition of Hill, p. 32, ans. 49. There is no testimony on behalf of Defendants expert, claiming that this is the equivalent in construction and mode of operation of the Joyce invention.

## MASSER PATENT.

This patent is dated Dec. 12, 1865, No. 51469.

It is simply a wedge shaped bolt having a serrated face, and inserted in a recess of a window sash; and is made to wedge or hold the window up in any desired fixed position. It is not combined with the rack-bar; is not operated by a lifting lever; does not suggest the use of such devices; in fact, its construction is such as to render its use for a lifting lever impossible. This is stated by Mr. Hill, in answer, page 34. "The pawl in the lever jack engages with the corresponding teeth in the rack-bar. There is no toothed rack-bar in the Masser device; in fact there is no rack-bar at all. The pawl in the lever jack has a seat, which practically limits the wedge action. There is no seat for the wedge in the Masser device, and the wedging effect is practically unlimited."

The witness might have added another reason which exists; and that is, the angle of the inclined wedge is so great, that if it was used with the rack-bar, and could be lifted out of the obtuse wedge recess if it had teeth large enough to hold the rack-bar, the lost motion would be so great, as to practically prevent the operation of the device.

## W. M. SMITH PATENT OF 1870.

This is a patent for a Cotton Press.

Mr. Hill, Appellant's expert, testifies of this patent as follows:—section 49, page 27.—"It does not show a lever jack containing the customary elements of a device of this character. There is no hollow frame; no toothed rack-bar; no actuating lever to raise the rack-bar; no holding pawl to prevent said rack-bar from receding in its frame under the load. In fact, nothing that bears any resemblance to the portable lever jack."

It will be seen that the pawl boxes are movable, and that they are held in position by a link attached to the beam D. They are therefore not adapted in construction or in combination, to be used with the rising bar of the lever jack. It does not show the ways, grooves, or guards formed in the frame of a lever jack. It cannot therefore anticipate in any sense, the Joyce invention.

## SMITH PATENT OF 1871.

There are no pawls shown in this patent of any kind. The same kind of sliding pawl boxes are shown and described as those in the patent of 1870. Concede that the many-toothed pawls were intended to be used in these sliding pawl boxes H and I of the patent. It then becomes the same as his patent of 1870. And as before shown, does not anticipate the invention.

## F. B. SMITH—L. SMITH—AND B. FASIG PATENTS.

In addition to these patents there were placed before the expert of the Appellees, Hallock, who was called by the appellants, the patent of F. B. Smith, E. L. Smith, and D. Fasig. The L. Smith patent shows a single toothed pawl, which is pressed in against the tooth of the rack-bar, and held in contact against the teeth by the force of the spring, assisted by the friction of the weight; the pawl moving at right-angles to the face of the rack-bar.

The Fasig patent shows a similar pawl operating in the same manner; the pressure of the spring assisting in holding the pawl in engagement with the rack-bar.

F. B. Smith patent shows a single toothed pivoted gravitating pawl, operating in the same manner as the Leffel Jack.

The object of the introduction of these patents is to show, that gravitating and spring pawls have both been employed to hold the rack-bar of a lifting jack. And that they are therefore equivalents. We admit that they are equivalents, when they are used simply to move a pawl, but not when the gravitating pawl, or the spring actuating the pawl are depended to keep the engagement. The inclined seat, in connection with the teeth of the pawl, sustain the weight, and do not depend upon the gravitation of the pawl, or the force of the spring to keep the engagement of the parts. The shape of the pawl and seat in the frame, furnish a positive hold to prevent the falling of the load. The gravity of the pawl and the force of a spring are not called into use. Joyce was the first one to introduce *this* function in a lever jack.

## HUTTON PATENT OF 1867.

At the hearing several other patents were cited. They were not discussed by the Appellant's expert. They are manifestly of the same kind as the patents before discussed. The Hutton patent, dated 1867, is practically the same as the Masser patent, which shows the use of a wedge key for holding a sash. This wedge key is held by the friction of the rail E in place for locking the sash. It manifestly operates as a wedge or key. Its face is shown serrated, but whether serrated or not, it would act as a wedge to hold the frame up, and its action would be accelerated by the friction of the rail E. This patent does not show the seat or construction of pawl, which would enable it to be used in the lever jack as employed by Mr. Joyce.

## RODGER'S PATENT.—SASH HOLDER.

This is similar to the Hutton patent above described. There are two forms of catches shown. The patent speaks of it as follows:—"The said catch is operated by the lever G, which extends through and beyond the side of the window-frame. It is connected to the catch by a link 8, as shown in Fig. 3."

In regard to the other modification, the patent says—"The lower end of the catch rests upon one arm of the lever K, and the weight I upon the opposite arm of the said lever. The catch being by this means maintained in contact with the rachet of the window-frame. This modification requires a weighted lever to hold the catch up in engagement with the window sash. There are shoulders and projections on these catches for holding the window in position; and means for withdrawing the catches to raise and lower the window."

None of these window sash fastenings show the combination of Joyce's lever jack, where the five elements of frame, shipping lifting lever, rack-bar operating the pawl, inclined many-toothed pawl, and the pawl box formed in the frame having ways and guides to operate in the manner described.

## SAWTELL, GENUNG, CONNELLY AND SHEPHERD PATENTS.

These patents were likewise introduced at the hearing. The Sawtell patent is for a gravitating bolt used in a sash bar. It does not show a serrated face, bolt, or a pawl; simply a gravitating bolt fastening for a window sash.

The same is true of the Connelly patent of 1854. The catches in neither of these patents are adapted to act with the rack-bar.

The same is true of the Shepherd patent of 1872, which is

simply a gravitating lock bolt entering a notch in the window frame to support the sash. It locks the window in position, and when the bolt is released, the sash may be raised and lowered.

The Genung patent of 1854, is for a lever lifting jack, and shows a gravitating pawl, having a single tooth engaging with the rack-bar. The seat of the tooth is on a horizontal plane, and all the weight is sustained by a single tooth.

Defendants also introduced the Exhibit Leffel Lever Jack, which has a single toothed pawl working on a pivot point, and employing a spring to prevent it from moving too far outward, and to start it forward until it has passed a vertical line, when it falls into engagement with the rack-bar. All the weight is sustained by a single tooth. The evidence before quoted shows that Leffel's was the principal jack employed by railroads, prior to the time of the introduction of the Joyce Jack, which has superseded it.

We submit, in view of the state of the art here represented, that Joyce's invention is not anticipated; or want of invention shown; the combination being new, and it, producing a highly useful result is a sufficient answer to the want of invention.

The above record shows, that from 1854 down to 1874, the date of Joyce's invention, varying forms of lever jacks had been attempted. If the use of a many toothed pawl was so obvious in view of the Masser, and other sash fastenings, it would seem strange that they were not adopted and put into general use, in the manner shown and described by Joyce.

Under the circumstances of this case, we submit that it is not a proper case for the Court to say, there is no invention involved in the production of the Joyce patented lever jack. "The fact, that no mechanic did suggest it, is a sufficient answer to the suggestion." Derrick vs. Cassel, 9 Fed. Rep. 309.

## INFRINGEMENT.

The Court below decided that the first claim of the Joyce patent was not infringed by the defendant's device. The opinion was given orally, but it has been prepared and printed by the Court Reporter for the Federal Reporter, and is found in Volume 15, page 260. The error, as we contend, is contained in the following statement, which we presume is the language substantially used by his Honor Justice Matthews, in deciding the case:—"The Defendants manufacture a jack, having a many toothed pawl resting at its bottom upon a seat, slightly inclined toward the rack-bar, and actuated by the spring placed behind it within the frame. Tho inclination of the seat is not sufficient to actuate the pawl by gravity: nor are there any slots or other means of guiding the pawl in the sides of the frame. The function of the inclined seat being rather to assist the spring in preventing a backward slip of the pawl when under pressure, than to facilitate the forward movement of the pawl; although to the latter result it may be attributed in a slight degree."

The following statements we think are not warranted by the record:—First, "The inclination of the seat is not sufficient to actuate the pawl by gravity." Second, "Nor are there any slots or other means of guiding the pawl in the sides of the frame."

The testimony of Mr. Hill, page 27, in answer to question 19, shows that he operated defendant's jack under a load, and that it operated perfectly with the spring removed.

The testimony of Mr. Joyce, on page 23, question 1, shows the angle of the seat of the jack in evidence to be 15 degrees from the horizon. It is clear therefore, that the angle of this seat is made for something more than to prevent the pawl from slipping back; but to assist it in moving up to its work.

It was insisted by the defendant, that Joyce disclaimed the

use of his springs in stating the first object of his invention, which is as follows:—"The objects are, first—to substitute the weight of the pawl sliding in inclined slots, grooves, or guides for the elastic spring usually employed to press it against the teeth of the ratchet bar." As we understand this language, he does not want the spring to press the pawl *against* the teeth of the rack-bar. That is, to depend upon the spring as one of the effective means of holding the contact of pawl to rack-bar. Such springs are necessarily used with all pawls moving on a horizontal plane. The patents to L. Smith, of 1866, and D. Fasig, of 1862, are illustrations of this class. The spring not only moves the pawl forward, but is a forcible element in continuing to hold the pawl in position. It seems to us self-evident that with the pawl moving on a horizontal plane, its tendency to slip back under the thrust of the load is necessarily so great, that the active force of the spring must be employed to keep the pawl in position, to hold the load; and therefore, Joyce's invention was an employment of a suitable incline, to hold the pawl in position by the wedge shaped seat. The Defendant's spring is a very light spring. Its sole function is to start the pawl in motion, or to prevent its sticking, which at an angle of 10 degrees it would no doubt be liable to do.

There is no doubt, but what this form of Defendant's is not the full measure of what he might obtain by making the seat still more inclined. Two of the witnesses for the appellees testify, that they tried one of Defendant's jacks without a spring, and that it did not work. Counsel for Joyce was not present. Afterward the Defendant below had a test made by two of his witnesses, who state that the pawl did not move forward practically, when the spring was removed. But it also appears, that the pawl experimented with was rounded on the bottom, which caused it to tip, the action being just like a single toothed pawl. (See p. 44, A. 40.) This is not the pawl sued on, which is made plain, as

shown in the Mosher patent. But the test made by Mr. Hill with the jack having a pawl at an angle of 10 degrees, shows that with the Mosher jacks made at that angle, with incline of the pawl on a plane of the same angle, the spring is not necessary. And that the function is mainly performed by the inclined seat. The angle of frictional repose is supposed to be $7\frac{1}{2}$ degrees. (See Q. 70, page 38, testimony of Mr. Hill. In practice it is employed at varying degrees above that angle.

We may admit for sake of argument, that the angle of 10 degrees would not practically be enough for ordinary finish to overcome the liability of sticking of the parts; yet we think it self-evident, that with this angle, the gravity of the pawl does nearly all the work of moving the pawl forward; and *all* the work in holding the pawl in its seat against the thrust of the load, is performed by the seat alone, especially when made with an angle two and one half degrees above the angle of frictional repose.

DEFENDANTS JACK HAS INCLINED GROOVES AND GUIDES FOR THE PAWL IN THE FRAME OF THE JACK.

The third statement of his Honor, Judge Matthews, which we claim to be erroneous is—"Nor are there any slots or other means of guiding the pawl in the side of the frame."

The pawl is manifestly guided in its fall; and its parallelism maintained in its ways on the inclined seat at the bottom of the pawl; and the inclined stem towards the top of the pawl which projects out through the housing. A single glance at the operation of the jack will show, that when the lever is operated to raise the rack-bar, when the pawl is in engagement, it lifts the pawl up until the stem of the pawl strikes the top of the slot in the guides, and then the pawl slides backward and upward on its incline, preserving the parallelism of the face.

It is true that the Defendant's claim that this stem performs no function, but such a claim is absurd, when we look at the operation of the thing itself. Why is the stem made of the same

inclination as the angle of the seat? Clearly, to preserve the perpendicularity of the pawl; to keep its teeth parallel with the face of the rack-bar in its backward movement, so that it is in position to move forward, and simultaneously engage all of the teeth with the rack-bar. If the pawl should rock on its seat and present only one tooth, it would have all the objections of the single toothed pawls hitherto used in lever jacks. (See testimony of Mr. Hill, page 27, A. 17–18.)

J. K. Ruggs also testifies, pages 18, 19, Answers 14–17, Question and answer are as follows:—"What function does this guide, that you speak of, perform in enabling the pawl to engage with the teeth of the rack?"

A. "It guides the pawl laterally; keeps it square in front of the teeth, and being upon an incline, the same or nearly the same as the base that the pawl rests upon, in raising the lever it prevents friction on the joints of the teeth, serves as a guide to hold the teeth in place, until the joints of the teeth slip past each other, and the pawl engages with the teeth in the bar."

## CLAIM.

Appellant's first claim is as follows:—"A pawl for a lever jack with two or more teeth, and adapted to move in inclined slots, grooves or guides formed in the frame, substantially as described."

We are inclined to think, that if his Honor Judge Matthews, had had the Defendants' jack before him when he formed his opinion in the case, and had this testimony above quoted cited to him, he would not have found that the Defendants' jack had no slot or means of guiding the pawl in the sides of the frame. And that on this point, his decision on the question of infringement turns.

The second claim we do not think is infringed, because it is limited to the form of guides and pins employed: The language of the specification, "Other modifications involving the principle

of operation may be possible; but I prefer the construction represented in Fig. 1, at the same time not limiting myself strictly to that," shows that the patentee meant to claim broadly the many toothed pawl moving on slots, guides or ways formed in the frame of the jack; and that the office intended to grant this claim we think is manifest.

In view of the whole matter found in the record; in view of the knowledge of serrated wedge bolts for window sashes; the many toothed pawls operated by levers as in the safety cage; in view of the fact that from 1854, the date of the Massey serrated wedge bolts and window sashes; down to 1874, no one attempted to make the combination of many toothed pawl with the lifting jack. And in view of the fact that as soon as it was adopted by Joyce, he and the defendants entered and occupied the field to the exclusion of older forms of lever jacks, "all these matters are very persuasive of its patentability." Lindsey vs. Stern, 10 Fed. Rep., 415. Smith vs. Goodyear, Vol. 93, U. S., 495. We think there is merit in the Joyce patent and we therefore confidently ask your Honors to give to this claim of the patent that liberal construction which, in view of the facts and benefits conferred, it has justly merited.

We have already stated that a spring is ordinarily an equivalent for a weight; and for the purpose of moving a pawl we concede that they were well known equivalents at the time of the Joyce invention. Now what did Mr. Joyce do? He wanted to avoid the pivoted pawls which occasioned so much lost motion in lever jacks; and besides which wear and render the engagement of the pawl with the rack under heavy loads insecure. The horizontally moving pawls had been employed with a spring to press and assist in holding the horizontally moving pawl against the rack-bar to sustain the weight of the load. Mr. Joyce, taking the many toothed pawl conceived the idea of so holding and guiding the pawl or inclined seats, with guides to maintain it

perpendicularly, that he could move that device, divide the strain on many teeth and hold the load secure by the position of the pawl alone.

He also discovered that with this inclined seat and vertically moving pawl when its teeth were preserved in parallel planes, he did not need a spring to exert pressure after the pawl was set to hold the load. These two objects are both accomplished by the defendants' lever jack. The spring in defendants' jacks is accessrory simply in starting the pawl into motion. Defendants use of course, an inferior mode of Joyce's, but he obtains one of the objects fully. He obtains the other object measurably full. He has the substance of the Joyce invention embodied in the first claim, where no limitation is placed excluding the use of a spring. Surely, if this claim is valid, defendant must infringe it.

There is another consideration which seems to require such a construction. Mr. Joyce did not invent, nor intend to claim a gravitating pawl. The office knew, and Mr. Joyce knew that both gravitating pawls and spring pawls were old in the arts.

It can not be, therefore, that Mr. Joyce and the Patent Office meant to say that he disclaimed the use of a spring for whatever purpose used, in connection with a pawl. The record shows a spring had been used for two purposes: One to assist or start the motion of the gravitating pawl, as in the Leffel Jack. As soon as the pawl has passed the perpendicular line moving on its pivot, gravity then acts to hold the pawl against the rack-bar. This is true with every inclined pivoted pawl.

While in the Fasig and L. Smith patents, the spring is used as an active force to assist in holding the pawl against the rack-bar. To construe Mr. Joyce's statement, therefore, with relation to the art to which it belongs, it seems to us manifest that it was the latter function of the spring that he did not need to employ. Else why does he use the term, "having an elastic spring usually employed to *press* it against the teeth of the ratchet bar." Had the

other function, to-wit: the moving of the pawl forward, or the starting of the movement of the pawl, been intended, his language would have been "having a spring usually employed to *move* the pawl," and not the words, "to press it against the teeth of the ratchet bar."

We submit that in view of the facts disclosed in the record, that Mr. Joyce has made a measurable advance in the art of lever jacks. He has placed in the hands of the railroad men and other builders a tool or implement which is much better, much less liable in operation to let down its load and cause disaster to the workingmen, as well as loss of property, than any other lever jack before made. And we submit that the Defendants have taken the substance of that invention and adopted an inferior form. And it seems to us that this is a case which calls for the application of the language of the Supreme Court in the case of Hyndman vs. Roots, 97 U. S., page 232.

In this case the applicant had embodied in his claim the limitation that the blower case "was so arranged as to admit of the abutments being introduced or removed without requiring the case to be taken apart." The Defendant manufactured his blower case so that it *had* to be taken apart to remove the abutments. Yet as the Defendant's division of case performed no useful function, the Supreme Court found it to infringe a claim so limited, and say: "The appellant's case is cast in two parts. There is a joint or division on the axial plane through the journal boxes. It is in proof that this is neither reasonable nor necessary. Where the case is large and too heavy for convenient handling, it may be useful, and for such cases it is suggested in the patent of the appellees. The patent of the appellant prescribes it for all his cases, and he so makes them. Why is this, and what are his objects and purpose? We can imagine none but to gather where another had sown, and escape by simulation and subterfuge the consequences which the act of Congress has prescribed for the

unlawful appropriation of such property. There is scarcely a thought expressed in the work of the appellees, so to speak, that is not found substantially transferred or closely copied in that of the appellant."

We submit that the spirit of the foregoing rule of law should be applied to the case at bar; and that the finding of the Court below should be reversed.

Respectfully,

Edw'd

E. E. WOOD & BOYD,

Attorneys for Appellant.